

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Expanding Flexible Use of the 3.7 GHz to
4.2 GHz Band

Eligible Satellite Operator Transition Plans for
the 3.7-4.2 GHz Band

GN Docket No. 18-122

GN Docket No. 20-173

**COMMENTS OF EUTELSAT S.A.
ON THE TRANSITION PLANS FILED BY
SES AMERICOM, INC. AND INTELSAT LICENSE LLC**

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SUMMARY

The transition plans filed by the C-band satellite operators will form the foundation for the accelerated transition that will unfold over between now and December 2023. As such, it is vitally important that these plans reflect a thoughtful, accurate, and realistic approach to the incumbent service relocation work that lies ahead.

The Transition Plan of SES Americom, Inc. (“SES”) inflates its replacement satellite costs far beyond any reasonable and necessary level. SES has manipulated its fleet to create a need for at least one more replacement satellite than necessary over the CONUS, and has proposed reimbursement for vast additional unnecessary costs of in-orbit and ground spares, as well as additional unnecessary launches. In this way, SES proposes to have American taxpayers fund not only the replacement of a substantial part of SES’s aging satellite fleet, but also additional *extra* satellites and *extra* launches that SES will then be free to use or resell for its own benefit. The Commission should reject SES’s machinations.

In contrast, the Transition Plan of Intelsat License LLC (“Intelsat”) more accurately reflects the level of careful thought and analysis that will be needed for these plans to succeed. Nevertheless, Intelsat also takes an aggressive approach that does not comport with the Commission’s *C-band Order*, albeit to a lesser extent than SES, by asserting that several replacement satellites are necessary to the transition and should be paid for through the Clearinghouse, but it fails to offer sufficiently detailed justification to explain how each of these replacements is “necessitated by the relocation” and why they represent the most efficient, least costly approach. In particular, Intelsat proposes to replace Galaxy 12, a satellite that is in inclined orbit and therefore unsuitable for C-band cable distribution services today due to the antenna tracking limitations. Moreover, it proposes to replace three additional satellites –

Galaxy 3C, Galaxy 12, and Galaxy 13 – with useful lives that extend past the end of the accelerated relocation period, and that are therefore authorized and expected to operate throughout the transition.

Neither company offers any proposed allocation of the ineligible portion of the costs of these replacement satellites. Such allocation is clearly necessary and additional guidance from the Commission would be helpful to clarify the precise extent to which these replacement satellite costs are eligible. Eutelsat has separately filed a Petition for Expedited Reconsideration or Clarification seeking confirmation that eligible costs are limited to satellites operating only in the 4.0-4.2 GHz band (and corresponding uplink band) and covering only the CONUS for the duration of their useful life, as well as confirmation that the costs of spare satellites and backup launches are ineligible. The Commission should expeditiously grant Eutelsat's Petition and provided this much-needed guidance in light of the overreaching Transition Plans submitted by of SES and Intelsat.

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Eutelsat S.A. (“Eutelsat”) hereby comments on the transition plans filed by Intelsat License LLC (“Intelsat”) and SES Americom, Inc. (“SES”) in the above-captioned proceedings.¹ Eutelsat believes that Intelsat’s Transition Plan appears largely to be designed to enable successful completion of the accelerated relocation process. However, the approach to satellite replacement costs in SES’s Transition Plan (and to a lesser extent Intelsat’s) contradict the *C-band Order* and should be modified or otherwise rejected.

Specifically, SES vastly overstates its replacement satellite costs by including at least one ineligible operational satellite, as well as ineligible in-orbit and ground spares and associated excess launch costs that are not necessary to the transition. Similarly, Intelsat’s proposal to replace existing satellites with useful lives that extend beyond the end of the transition period in December 2023 would not be a “necessary” cost within the meaning in the *C-band Order*. Even to the extent that the proposed replacement satellites may be partially eligible for reimbursement, neither SES nor Intelsat offers any proposed allocation of their ineligible costs.

¹ See 47 C.F.R. § 27.1412(d); see *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, FCC 20-22, 35 FCC Rcd 2343 (2020) (“*C-band Order*”), *appeals pending*. See Intelsat C-band Clearing Transition Plan, GN Docket Nos. 18-122, 20-173 (filed June 19, 2020) (“Intelsat Transition Plan”); Accelerated C-band Transition Implementation Plan, GN Docket No. 18-122 (filed June 19, 2020) (“SES Transition Plan”).

To aid that process, Eutelsat has separately filed a Petition for Expedited Reconsideration or Clarification in which it requested that the Commission confirm that eligible replacement satellite costs are limited to satellites operating only in the 4.0-4.2 GHz band (and corresponding uplink band) and covering only the CONUS for the duration of their useful life.² Eutelsat further requested that the Commission clarify that the costs of spare satellites and “backup” launches are ineligible for reimbursement.³ The Commission should expeditiously grant Eutelsat’s Petition in order to provide this much-needed guidance in light of the submissions of Intelsat and SES.

I. INTRODUCTION

The Commission’s rules require each eligible space station operator to file a Transition Plan detailing “necessary actions for clearing [their] transponders from the 3700-4000 MHz band[.]”⁴ Operators must show which existing space stations will need to be transitioned to operations above 4000 MHz, and “the number of new satellites, if any, that the space station operator will need to launch in order to maintain sufficient capacity post-transition, *including detailed descriptions of why such new satellites are necessary.*”⁵

As part of the transition, space station operators are eligible to receive reimbursements for certain costs associated with the transition. The Commission expects incumbent satellite operators to “obtain the equipment that most closely replaces their existing equipment or, as needed, provides the targeted technology upgrades necessary for clearing the lower 300 megahertz, and all relocation costs must be reasonable.”⁶ Reasonable relocation costs are “those necessitated by the

² Eutelsat Petition for Expedited Reconsideration or Clarification, GN Docket No. 18-122 (filed May 26, 2020), at 6-8 (“Eutelsat Petition”); Eutelsat Notice of Ex Parte Communication, GN Docket No. 18-122 (filed June 8, 2020), at 1.

³ *Id.*

⁴ 47 C.F.R. § 27.1412(d)(1).

⁵ *Id.* (emphasis added).

⁶ *C-band Order* at ¶ 194.

relocation in order to ensure that incumbent space station operators . . . provide substantially the same or better service to incumbent earth station operators . . . compared to what they were able to provide before.”⁷

While SES and Intelsat pay lip service to this standard, their Transition Plans include excessive costs for unnecessary – and therefore ineligible – replacement satellites. Critically, SES and Intelsat fail to describe why these significant additional costs are necessary to an already costly transition, and therefore both Transition Plans are deficient under the Commission’s rules, as described below. To protect American taxpayers and competitive global satellite markets, the Commission should direct SES and Intelsat to excise these costs from their plans.

II. DISCUSSION

The Transition Plans filed by SES, and to a lesser extent Intelsat, contain substantial ineligible satellite costs, in two forms: (i) replacement satellites that are not necessary to enable these operators to provide the “same or better service” as a result of the transition; and (ii) ineligible satellite functions and capabilities that must be cost allocated, if the Commission deems those satellites to be an eligible at all. In both cases, the associated costs should be deemed ineligible for reimbursement.

A. The Commission Should Reject SES’s Attempts Artificially to Inflate Its Replacement Satellite Needs

SES’s Transition Plan artificially and impermissibly inflates its replacement satellite costs by (i) manipulating its fleet to create at least one additional satellite in need of replacement over

⁷ *Id.* The Commission cautioned that replacing such equipment is not a blank check for incumbent operators to claim any costs, rather existing equipment may be replaced to the extent necessary to provide “the same level of service more efficiently using less spectrum[.]” *See id.* at ¶ 137. Thus, parties may not simply claim the entire cost of replacing a satellite which was providing other non-C-band, non-CONUS services.

the CONUS; and (ii) including large unnecessary costs for in-orbit and ground spares, as well as “backup launches.” By the end of the transition, if the Commission permits this plan to stand, American taxpayers will have paid, not only to replace a substantial part of SES’s existing satellite fleet, but also for *extra* satellites and *extra* launches that SES will then be free to use or sell for its own benefit unrelated to the C-band relocation. The Commission should reject SES’s machinations.

1. The Commission Should Not Reimburse SES for Unnecessary Relocation Costs

SES’s Transition Plan argues that it requires a total of six new satellites as part of the C-band transition: three to replace satellites in orbit; one in-orbit spare; and two ground spares, with a total cost of \$1.25 billion.⁸ Having reviewed the SES Transition Plan, Eutelsat believes that SES has substantially inflated these numbers and that its true needs do not exceed two new satellites.

In particular, while the SES Transition Plan indicates a need to replace AMC-10 at 135° West,⁹ no such replacement could be deemed “necessary” as a result of the C-band transition. Specifically, in 2019, SES filed a request to accelerate the de-orbiting of AMC-10, explaining that the satellite is “not carrying any customer traffic” and that “moving up the satellite’s retirement date is necessary to provide greater certainty that the orbit-raising maneuvers and satellite passivation can be successfully completed.”¹⁰ The satellite’s retirement was completed later that month, nearly a year before the Commission adopted the *C-band Order*.¹¹ It should be plain that replacement of a satellite that was retired in February 2019 cannot be “reasonable and

⁸ SES Transition Plan at 6, 8, 22. In other parts of the Transition Plan, SES seems to suggest that a total of *six* new satellites are needed, including a second ground spare. *See* SES Transition Plan at 8. As discussed herein, Eutelsat believes that the Commission should deem spare satellites categorically ineligible, irrespective of how many a satellite operator may desire.

⁹ *Id.* at 6 and n.20.

¹⁰ SES Americom, Inc., File No. SAT-STA-20190212-00010, Call Sign S2342 (granted Feb. 14, 2020)

¹¹ Letter from Petra A. Vorwig, Senior Legal & Regulatory Counsel, SES Americom, Inc., File No. SAT-STA-20190212-00010 (filed Mar. 1, 2020).

needed to transition *existing* operations in the contiguous United States out of the lower 300 megahertz of the C-band.”¹²

To the extent that SES simply needs additional C-band capacity at the 135° West orbital location, again no such replacement is needed. SES has recently reshuffled the orbital locations of three of its satellites, including relocating AMC-8 from 139° West to 135° West to assist. In a recent filing, SES and Alascom, Inc. jointly requested an extension of the license term of AMC-8 from June 30, 2020 to June 30, 2025, explaining that, “SES has calculated that there is sufficient fuel onboard AMC-8 for the spacecraft to continue providing service during the proposed extension of the license term and to deorbit the spacecraft consistent with the orbital debris mitigation plan previously approved by the Commission.”

Although the satellite is jointly licensed to SES and Alascom, it has been on the brink of retirement for many years. It was formerly used for radio broadcast distribution, a service that ceased June 30, 2017,¹³ as well as for communications services by AT&T Alascom.¹⁴ As a result, the satellite is currently unlikely to be carrying much traffic. Nevertheless, SES’s recent application notes that:

[T]he satellite’s overall health is good, with all satellite subsystems functioning satisfactorily. There is no single point of failure in the satellite’s design; and there is no problem with the satellite’s Telemetry, Tracking and Command (‘TT&C’) links, including the back-up TT&C links. As a result, extending the license term for

¹² *C-band Order* at ¶ 204.

¹³ Adam Jacobson, “With Hours To Go, AMC-8 Satellite Migration Still A Concern,” RADIO + TELEVISION BUSINESS REPORT (June 27, 2017) (“June 30 could prove to be a very busy day for radio industry engineers and tech gurus . . . when the AMC-8 satellite says its last goodbye”), *available at*: <https://www.rbr.com/amc-8-satellite-migration-june30>.

¹⁴ AT&T Alascom has been winding down its business on AMC-8 for many years, raising prices for its services and filing notice that it would discontinue services offered on AMC-8 in 2019. *See, e.g.*, Section 63.71 Application of Alascom, Inc. (filed Aug. 1, 2018), at 2, *available at*: <https://ecfsapi.fcc.gov/file/1081512144743/214%20Alascom%20EWA%20Satellite%20final%20081518.pdf>.

AMC-8 will serve the public interest by allowing the Licensees to continue to offer service to customers, promoting the efficient use of satellite and orbital resources.¹⁵

Thus, it appears that AMC-8 is perfectly positioned to provide C-band capacity during the transition to meet the needs of SES customers, with no need for a replacement.

2. The Commission Should Reject Spare Satellite and Backup Launch Costs

SES similarly inflates its satellite replacement costs by claiming that an in-orbit spare satellite, one two ground spares, and additional backup launches are “necessary” to the transition.¹⁶ SES fails, however, to describe in sufficient detail any basis for claiming reimbursement for either the proposed in-orbit spare or the two additional ground spares, let alone both types of satellites.

On-ground spare satellites are by definition unnecessary costs because they may never be used and otherwise significantly increase the cost of the transition. SES asserts only that it is seeking to mitigate against a satellite failure but does not explain how these satellites would be necessary to provide the “same or better” service over CONUS as required by the Commission’s rules. Indeed, SES cannot, because these on-ground spares would not provide any service at all, of course, from the ground.¹⁷

SES’s concerns essentially boil down to the risk that a satellite failure – in-orbit or during launch – could cause it to miss the Commission’s transition deadline. Those concerns, however, cannot alone justify spending hundreds of millions of dollars on satellites and launch services that, absent calamity, will never be needed. Moreover, SES never explains how it would propose to

¹⁵ SES Americom, Inc., File No. SAT-MOD-20200413-00033, Call Sign S2379 (granted July 1, 2020).

¹⁶ SES Transition Plan at 8.

¹⁷ Given that the cost of on ground replacement satellites are unnecessary, it follows that related costs, including the provision of backup launches would also be unnecessary. As Eutelsat pointed out in its Petition for Reconsideration, at 7, the Commission should categorically exclude the cost of back-up launches because such costs would amount to a subsidization of satellite or launch capacity that may not be used to provide C-band services within CONUS. The Commission should therefore reject attempts to include such costs in the transition plan.

reimburse American taxpayers for any of those backup satellites or launch services that are not used in the relocation process.

Rather, SES's fears can best be addressed through the Commission's well-established waiver process, should these untoward events come to pass. A satellite or launch failure would certainly be likely to constitute "good cause" for relief.¹⁸ But, only once the details are known could the parties, the Relocation Coordinator, the Clearinghouse, the Bureau, and the Commission alike determine the impact of a failure, consider whether it can be mitigated using available resources, and fashion a suitable remedy.

SES's argument that an in-orbit spare is needed to "satisfy contractual restoration obligations for customers at 105° W.L., 103° W.L., and 101° W.L. and therefore providing same-or-better service after the transition as they had before" is similarly wanting. The Commission's rules require SES to describe the need for replacement satellites "in detail."¹⁹ Yet, other than that bare assertion, SES provides no contract terms to support its claim. Similarly, SES admits that it does not operate an in-orbit spare today, but provides redundancy "using transponders on SES's existing satellites."²⁰ Thus, an in-orbit spare dedicated to this task, far from being necessary, appears to be an impermissible step to "gold-plate" its network in violation of the *C-band Order*.²¹ In short, SES offers no detailed showing that it will be unable to meet any such requirement without an in-orbit spare, even assuming that such "hot swap" redundancy is a contractual requirement of its service.

¹⁸ 47 C.F.R. § 1.3.

¹⁹ 47 C.F.R. § 27.1412(d).

²⁰ SES Transition Plan at 6.

²¹ *C-band Order* at ¶ 195.

B. Intelsat's Transition Plan Seeks Impermissible Reimbursement for Unnecessary Satellites

In the *C-band Order*, the Commission determined that “compensable relocation costs are only those that are reasonable and needed to transition existing operations in the contiguous United States out of the lower 300 megahertz of the C-band;” and that “procuring and launching new satellites may be reasonably necessary to complete the transition” because “[t]hese new satellites will support more intensive use of the 4.0-4.2 GHz band after the transition.”²²

Intelsat asserts that it needs five replacement satellites for its cable distribution services, but does not provide a clear explanation for why each satellite is needed.²³ For example, Galaxy 12 does not currently provide C-band distribution services by Intelsat's own admission, but Intelsat seeks to ‘replace’ this satellite in order to now provide restoration services for cable distribution.²⁴ Moreover, Intelsat's transition plan converts Galaxy 23 from a restoration role into a distribution role.²⁵ Intelsat's descriptions lack the detail required to sufficiently explain why its actions are necessary, and therefore call into question the need for these replacements in the first instance, especially where Intelsat already appears to have satellites in its fleet providing the relevant services.

Moreover, Intelsat's proposal to replace three satellites with useful lives that extend beyond the December 2023 end of the accelerated transition period does not comply with the requirements of the *C-band Order*.²⁶ Replacement of those satellites is not “necessitated by the relocation,”

²² *C-band Order* at ¶¶ 199, 200.

²³ Intelsat claims that the following satellites will need to be replaced to meet the FCC's accelerated spectrum clearing timeframe: Galaxy 12, Galaxy 13, Galaxy 15, Galaxy 17, and Galaxy 23.

²⁴ Intelsat Transition Plan at 13.

²⁵ *Id.* at 13.

²⁶ *Id.* at 13-15 (noting it will replace Galaxy 3C, 12, and 13). Notably each of these satellites is authorized to operate throughout the transition period. To the extent Intelsat claims the end of life is not co-extensive with its authorizations, it must provide additional details on the calculated end-of-life. See Intelsat License, LLC, Application to Modify Authorization for Galaxy 3C (S2381), File No.

because any replacement satellite will merely replicate the existing C-band coverage provided by the satellites currently in orbit for the duration of the transition period.

Intelsat acknowledges that it is not permitted to seek reimbursement for satellites which will not achieve their end of life prior to the end of the transition.²⁷ Nevertheless, Intelsat seeks to replace Galaxy 3C, Galaxy 12, and Galaxy 13 all of which have are authorized to operate throughout the duration of the accelerated transition.²⁸ In particular, Galaxy 13 has an expected end-of-life in 2025, well after the accelerated transition period.²⁹ It would not be reasonable to replace these satellites while they are capable of providing service and therefore Intelsat's transition plan overstates the need for replacement satellites.

Intelsat itself fails to explain how a replacement satellite would meet any need during the transition that its existing fleet cannot. While Intelsat claims that it is limited by practical constraints of its earth station customers, it does not follow that Intelsat must replace its current C-band payloads "before their planned end-of-life[.]"³⁰ Intelsat asserts that its customers "do not have the technical capability, physical space, or ability to add new receive antennas or license

SAT-MOD-20170523-00077 (granted July 20, 2017) (granting authority to operate through June 30, 2026) ("*Galaxy 3C Modification*"); Intelsat License, LLC, Application to Modify Authorization for Galaxy 12 (S2422), File No. SAT-MOD- 20180215-00017 (granted April 19, 2018) (granting authority to operate through December 31, 2023) ("*Galaxy 12 Modification*"); Intelsat License, LLC, Application to Modify Authorization for Galaxy 13 (S2386), File No. SAT-MOD- 20181105-00082 (granted Feb. 7, 2019) (granting authority to operate through December 31, 2025) ("*Galaxy 13 Modification*").

²⁷ Intelsat Transition Plan at 14 ("Galaxy 18 does not need to be replaced during the clearing period. As such, Intelsat does not intend to seek reimbursement for the Galaxy 18 replacement satellite, even though the replacement will be utilized for service continuity after the clearing period.").

²⁸ See generally Galaxy 3C Modification, Galaxy 12 Modification, and Galaxy 13 Modification.

²⁹ See Galaxy 13 Modification, Narrative at 2 ("the expected end of service life of the satellite ... was most recently estimated to be the end of 2025, assuming no inclined-orbit operation; inclined-orbit operation would extend Galaxy 13's expected end of service life an additional five years").

³⁰ *Id.* at 11.

them within the timeframes required” and thus it must replace nearly all of its C-band fleet, including some before their nominal end of life.³¹

This argument misses the mark, for at least two reasons. *First*, by electing accelerated relocation,³² Intelsat committed to transitioning its customers, and therefore it is Intelsat’s responsibility, and not its customers, to ensure a smooth transition. Intelsat may not use its customers as a scapegoat to obtain a fully funded new fleet of satellites when such costs are not necessary for the transition. *Second*, if Intelsat intends to avoid burdening additional earth stations by delivering both “dual illumination” video feeds from the same orbital location, there would be no basis for an additional satellite to re-use any portion of the 3.7-4.2 GHz band because Intelsat’s existing satellites already transmit using the entire band.

C. Even Assuming the Partial Eligibility of Replacement Satellite Costs, neither SES nor, to a Lesser Extent, Intelsat Performs Necessary Cost Allocation

The *C-band Order* limits the cost eligibility of new satellites to those that are needed in order to provide incremental capacity in the 4.0-4.2 GHz band over the CONUS as a result of the reallocation of the 3.7-4.0 GHz portion of the band.³³ To support “more intensive” use of the 4.0-4.2 GHz band, new satellites must therefore be needed to provide that additional capacity, either to provide dual illumination of video distribution services or accommodate other temporary customer needs during the transition, or to provide additional capacity (for example, at additional orbital locations) in the 4.0-4.2 GHz band that is *necessary* to continue delivering existing “same or similar” services within that band after the transition is over. In either case, the reasonable and necessary relocation cost is solely the cost of *additional* capacity in the 4.0-

³¹ Intelsat Transition Plan at 11.

³² Intelsat License, LLC, Accelerated Relocation Election, GN Docket No. 18-122 (filed May 26, 2020).

³³ *C-band Order* at ¶¶ 199-200.

4.2 GHz band to effect the transition. In no case would it be necessary or appropriate for the Commission to reimburse a satellite operator for the costs of such an additional satellite that includes capacity to serve customers in other bands, in other places, or after the need for such “surge” capacity abates.

In their Transition Plans, neither SES nor to a lesser extent Intelsat makes any apparent attempt to allocate replacement satellite costs into categories that are eligible or ineligible for reimbursement. As discussed in Eutelsat’s Petition for Reconsideration or Clarification, the Commission should establish clearer guidance on whether, and to what extent, the costs of hybrid satellites or those that provide coverage beyond the CONUS are eligible for reimbursement. Eutelsat has urged the Commission to confirm that only satellites that provide solely C-band services solely over the CONUS for their entire useful life are eligible for reimbursement. As an alternative, Eutelsat has argued that, if the Commission permits any reimbursement for the costs of hybrid satellites, satellites with greater coverage, or satellites that are subsequently relocated away from the CONUS, it should limit reimbursement solely to the incremental cost of the C-band payloads’ CONUS coverage.

To avoid gold-plating, the Commission must establish some limits on the eligibility of hybrid satellites that exceed these limits. Otherwise, the Commission leaves itself open to the types of abuses seen in the Transition Plans of SES and Intelsat. Indeed, SES has candidly admitted that it “has included all relocation expenses in its transition plan” without any attempt at cost allocation.³⁴ Similarly, in its Transition Plan, Intelsat specifically notes that it intends to be fully reimbursed for replacement satellites with 24 x 36 MHz transponders, which would

³⁴ SES Americom, Inc., Opposition to Petition for Reconsideration or Clarification of Eutelsat S.A., GN Docket No. 18-122 (filed June 26, 2020), at 6.

cover the full 500 MHz C-band spectrum, without justifying, for example, why such costs outside of CONUS should be reimbursed.³⁵

These positions contradict the express language in the *C-band Order* that “if an incumbent builds additional functionalities into replacement equipment that are not needed to facilitate the swift transition of the band, it must reasonably allocate the incremental costs of such additional functionalities to itself and only seek reimbursement for the costs reasonably allocated to the needed relocation.”³⁶ The Commission should grant Eutelsat’s Petition to provide clarity on these issues in time for satellite operators to adjust their Transition Plans before the second deadline in August 2020.

III. CONCLUSION

Given the foregoing deficiencies in Transition Plans submitted by SES and, to a lesser extent, Intelsat, the Commission should require both to amend such plans to eliminate unnecessary additional satellites and launch costs. Doing so would ensure the requirements in

³⁵ *Id.* at 13 (“Galaxy 13R will be designed with 24 x 36 MHz transponders. The upper transponders will be used for Distribution services in CONUS and the lower transponders will be used for Alaska, offshore and other non-CONUS services”)

³⁶ *C-band Order* at ¶ 194.

the *C-band Order* are upheld and that the U.S. public is not ultimately forced to bear the cost of the satellite operators' desire to refresh their fleets.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Carlos M. Nalda". The signature is fluid and cursive, with the first name "Carlos" being more prominent.

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